



May 16, 2000

Ms. Sarah H. Blackburn
Assistant City Attorney
City of Midland
P.O. Box 1152
Midland, Texas 79702-1152

OR2000-1933

Dear Ms. Blackburn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135368.

The City of Midland Police Department (the "department") received a request for a police report in which the requestor was the victim of an aggravated assault. You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

You assert that highlighted portions of Exhibit "B" are excepted from disclosure under section 552.108(a)(2). Section 552.108(a)(2) excepts from disclosure information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication. Gov't Code § 552.108(a)(2). A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that *concluded* in a final result other than a conviction or deferred adjudication. Although you assert that the information deals with the investigation of crime in relation to an investigation that did not result in a conviction or deferred adjudication, you also assert that felony charges are pending at this time. Section 552.108(a)(2) cannot apply to information that pertains to a pending criminal case because a pending case has not concluded in a final result. Thus, based on your conflicting arguments, we find that section 552.108(a)(2) is not applicable in this instance.

¹We note that you have submitted copies of the single police report as Exhibits B, C, D, and E. You raise a different exception to disclosure of the information you have highlighted in Exhibits B, C, and D. Exhibit E is a redacted version of the report which has already been released to the requestor.

Furthermore, you have not argued that any other provision of section 552.108 is applicable. *See generally* Gov't Code § 552.301(e)(1)(A) (governmental body must provide written comments stating the reasons why the exceptions apply to the submitted information). Therefore, you may not withhold the information under section 552.108(a)(2).

You also assert that highlighted information in Exhibit "C" should be excepted from disclosure under the informer's privilege. Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The Texas courts have recognized the informer's privilege. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies. Open Records Decision No. 279 at 2 (1981) (citing Wigmore, Evidence, § 2374, at 767 (McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). After reviewing the highlighted information, it does not appear nor have you demonstrated that the witnesses to the assault were informants. Accordingly, we conclude that the department may not withhold the identity of the witnesses under section 552.101 and the informer's privilege.

You also assert that the highlighted information in Exhibit "D" is protected from disclosure under section 552.130. Section 552.130(a) of the Government Code excepts from disclosure information relating to a driver's license and motor vehicle title or registration issued by an agency of this state. However, section 552.023 of the Government Code grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Because section 552.130 protects a person's privacy interest, the requestor has a special right of access to his driver's license number and the department must release this item to the requestor. However, driver's license numbers and license plate numbers belonging to others must be protected from disclosure under section 552.130(a). We have marked the information which you must withhold under section 552.130(a).

You also assert that social security numbers in Exhibit "D" are excepted from disclosure. Social security numbers may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that were obtained or are maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* However, it is not apparent to us that the

social security numbers in Exhibit "D" were obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security numbers were obtained or maintained pursuant to such a statute and are, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security numbers, the department should ensure that the numbers were not obtained or maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, we find that you may not withhold the submitted information under section 552.108(a)(2). Further, you may not withhold the marked information in Exhibit "C" under section 552.101 in conjunction with the informer's privilege. However, you must withhold the marked information in Exhibit "D" under section 552.130. The department must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.-Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/nc

Ref: ID# 135368

Encl. Marked documents

cc: Mr. Joe Rodriguez
2107 Belmont
Midland, Texas 79701
(w/o enclosures)